

## Department of Energy

## § 501.63

and indicate the part of the petition to which they apply. If the source is unusual or little known, briefly describe its contents.

(2) Identify at the end of each section of the petition any information or any statement based, in whole or in part, on information or principles which, to petitioner's knowledge, represent significant innovations to or departures from generally accepted facts or principles.

(g) *Appendices.* Include in the appendices material which the petitioner believes substantiates any analyses fundamental to the petition, materials prepared in connection with it, and any other documents, studies, or analyses which are believed to be relevant to the decision to be made. Also, include in the appendices copies of any forms submitted as part of the petition.

(h) *List of preparers.* List the names with the qualifications and professional credentials of the principal contributors to the preparation of the petition. Indicate the sections or subject matters for which each principal contributor was responsible.

(i) *Incorporation by reference.* Pertinent information may be incorporated into the petition by reference when this can be done without impeding agency and public review. Referenced materials must be specifically identified and their contents briefly described in the petition. To incorporate by reference, the material must be submitted with the petition, or if previously submitted, the office to which it was submitted must be identified in the petition. The petitioner cannot incorporate by reference material based on proprietary data not available to OFE for review.

(Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3269 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35; E.O. 12009, 42 FR 46267, Sept. 15, 1977)

[46 FR 59889, Dec. 7, 1981, as amended at 47 FR 50849, Nov. 10, 1982]

### **§ 501.63 Notice of the commencement of an administrative proceeding on an exemption petition.**

(a)(1) When a petition is accepted, OFE will publish in the FEDERAL REGISTER a Notice of Acceptance, or, in the case of a certification exemption, a Notice of Acceptance and Availability of Certification, signifying that an exemption proceeding has commenced. The notice will include a summary of the exemption petition, and publication will commence a public comment period of no less than forty-five (45) days during which interested parties may file written comments concerning the petition. In the case of a certification exemption, interested persons may request a public hearing during this period, pursuant to § 501.33.

(2) OFE will notify the appropriate State agency having apparent primary authority to permit or regulate the construction or operation of a powerplant that an exemption proceeding has commenced and will consult with this agency to the maximum extent practicable. Copies of all accepted petitions also will be forwarded to EPA, as provided in § 501.14(a).

(b) In processing an exemption petition, OFE shall comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's implementing regulations, and the DOE guidelines implementing those regulations (45 FR 20694, Mar. 28, 1980). Compliance with NEPA may involve the preparation of (1) an environmental impact statement (EIS) evaluating the grant or denial of an exemption petition, (2) an environmental assessment (EA), or (3) a memorandum to the file finding that the grant of the requested petition would not be considered a major federal action significantly affecting the quality of the human environment. If an EIS is required, OFE will publish in the FEDERAL REGISTER a Notice of Intent (NOI) to prepare an EIS as soon as practicable after commencement of the proceeding. A public meeting may be held pursuant to 40

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CFR 1501.7 to solicit comments or suggestions on the structure and content of the EIS.

[46 FR 59889, Dec. 7, 1981, as amended at 54 FR 52893, Dec. 22, 1989]

### **§ 501.64 Publication of notice of availability of tentative staff analysis.**

OFE will publish in the FEDERAL REGISTER a Notice of the Availability of Tentative Staff Analysis for the non-certification temporary public interest exemption, for noncertification environmental exemptions, and for a cogeneration exemption based on the public interest. OFE will provide a public comment period of at least fourteen (14) days from the date of publication during which interested persons may make written comments and request a public hearing.

### **§ 501.65 Publication of notice of availability of draft EIS.**

A Notice of Availability of any draft EIS will be published in the FEDERAL REGISTER and comments thereon will also be solicited. Interested persons may request a hearing on any draft EIS. Such hearing must be requested within thirty (30) days of publication of the Notice of Availability of the draft EIS.

[54 FR 52893, Dec. 22, 1989]

### **§ 501.66 OFE evaluation of the record, decision and order.**

(a) The administrative record in a proceeding under this part will consist of the proposed prohibition order and/or petition and related documents, all relevant evidence presented at the public hearing, all written comments, and any other information in the possession of OFE and made a part of the public record of the proceeding. OFE will base its determination to issue a rule or order on consideration of the whole record, or those parts thereof cited by a party and supported by reliable, probative, and substantial evidence.

(b) OFE may investigate and corroborate any statement in any petition, document, or public comments submitted to it. OFE also may use any relevant facts in its evaluation and may request submissions from

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third persons relevant to the petition or other documents. OFE also may request additional information, data, or analyses following a public hearing, if any, if this information is necessary to resolve disputed issues in the record. Any relevant information received by OFE following the hearing that is not declared to be confidential under § 501.7(a)(11) shall be made part of the public record with opportunity provided for rebuttal.

(c) OFE will notify all participants if, after the close of any public hearing or comment period, it receives or obtains any relevant information or evidence. Participants may respond to such information or evidence in writing within fourteen (14) days of such notification. If OFE finds that the additional information or evidence relates to material issues of disputed fact and may significantly influence the outcome of the proceeding, OFE shall reopen the hearing on the issue or issues to which the additional information or evidence relates.

### **§ 501.67 Petition redesignations.**

OFE, with the petitioner's approval, will redesignate an exemption petition if the petitioner qualifies for an exemption other than the one originally requested, even though he may not qualify for the specific exemption originally requested, or be entitled to the full exemption period provided by requested exemption. OFE shall give public notice of any redesignation of an exemption petition, and where a public hearing has been requested notice shall be given at least thirty (30) days prior to such hearing.

### **§ 501.68 Decision and order.**

(a)(1) OFE shall issue an order either granting or denying the petition for an exemption or permit within six (6) months after the end of the period for public comment and hearing applicable to any petition.

(2) OFE may extend the six (6) month period for decision to a date certain by publishing notice in the FEDERAL REGISTER, and stating the reasons for such extension.

(3) OFE will publish a final EIS at least thirty (30) days prior to take